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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 John Clark Buchanan, II,

10 Plaintiff,

11 v.

12 Randhir Ghandi, et al.,

13 Defendants.
14

No. CV-22-01482-PHX-SMB

ORDER

15 Pending before the Court is Defendant Bank of America N.A.’s Motion to Dismiss
16 Plaintiff’s Second Amended Complaint (“SAC”) (Doc. 81). Finding that oral argument is
17 not necessary to resolve the pending motions and having considered the parties’ briefing
18 and relevant case law, the Court will grant the Motion.

19 **I. FACTUAL BACKGROUND**

20 The Court set forth this case’s factual background in its previous Order denying a
21 Temporary Restraining Order (“TRO”). (*See* Doc. 76.) For ease of reference, the Court
22 now repeats that background here.

23 On July 26, 2005, Plaintiff and Bank of America, N.A. (“BANA”) executed a
24 Promissory Note titled “Bank of America Equity Maximizer Agreement and Disclosure
25 Statement” (“Loan Agreement”), which detailed Plaintiff’s \$150,000 credit line to
26 purchase the property in question. (*See* Docs. 9 at 3; 9-1 at 2–3, 9.) The Promissory Note
27 was secured by a Deed of Trust. (Docs. 9 at 3; 9-2 at 7.) The Deed of Trust was signed by
28 Plaintiff and Theresa Buchanan. (Docs. 9 at 3; 9-2 at 2.) On August 15, 2005, the Deed

1 was recorded in the Pinal County Recorder's Office as Instrument No. 2005-104177.
2 (Docs. 9 at 3; 9-2 at 2.) BANA executed a Notice of Substitution of Trustee on August 10,
3 2016, naming Quality Loan Service Corporation as the Substitute Trustee under the Deed
4 of Trust. (Docs. 9 at 3; 9-3 at 2.) BANA recorded the Notice of Substitution of Trustee
5 with the Pinal County Recorder's Office. (Docs. 9 at 3; 9-3 at 2.)

6 On December 27, 2019, BANA assigned all interests in the property to the
7 beneficiary through its servicing agent, Defendant Select Portfolio Servicing, Inc. ("SPS").
8 (Docs. 9 at 3-4; 9-4 at 2.) Plaintiff made timely payments under the Loan Agreement for
9 eleven years, ceased making regular and timely payments in 2016, and stopped making
10 payments entirely in 2017. (*See* Doc. 54 at 17.) Defendants assert that between 2016 and
11 2021, either BANA or SPS offered loan assistance to Plaintiff. (*See* Docs. 9 at 4; 9-5; 9-
12 6.) Defendants claim that Plaintiff either failed to provide the necessary documents or
13 rejected the offers for loan assistance. (Doc. 9 at 4.) Defendants further claim that BANA
14 and SPS provided notices to Plaintiff regarding potential foreclosure due to missed
15 payments. (*Id.*) Defendants allege that on November 12, 2019, SPS delivered a letter to
16 Plaintiff, informing Plaintiff that a foreclosure sale for his property was scheduled for
17 December 4, 2019. (Doc. 9-6.) Ultimately, the foreclosure sale was continued for nearly
18 three years, and the property was eventually sold on September 6, 2022. (*See* Docs. 9-7;
19 9-8.)

20 Plaintiff filed his original Complaint on September 1, 2022. (Doc 1.) The SPS
21 Defendants filed a Motion to Dismiss. (Doc. 10.) Without seeking leave Plaintiff filed his
22 First Amended Complaint ("FAC"), (Doc. 13), whereby he added the Buchalter
23 Defendants as additional defendants. Both sets of Defendants filed Motions to Dismiss,
24 which the Court granted without prejudice. (Doc. 46.) Plaintiff filed his Second Amended
25 Complaint on August 4, 2022, to which both sets of Defendants have filed Motions to
26 Dismiss for failure to state a claim. (Docs. 62; 64.) These Motions are now before the
27 Court.

28 **II. LEGAL STANDARD**

1 To survive a Rule 12(b)(6) motion for failure to state a claim, a complaint must meet
 2 the requirements of Rule 8(a)(2). Rule 8(a)(2) requires a “short and plain statement of the
 3 claim showing that the pleader is entitled to relief,” so that the defendant has “fair notice
 4 of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,
 5 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). This exists
 6 if the pleader sets forth “factual content that allows the court to draw the reasonable
 7 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556
 8 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported
 9 by mere conclusory statements, do not suffice.” *Id.* Plausibility does not equal
 10 “probability,” but requires “more than a sheer possibility that a defendant has acted
 11 unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a
 12 defendant’s liability, it ‘stops short of the line between possibility and plausibility’”. *Id.*
 13 (quoting *Twombly*, 550 U.S. at 557).

14 Dismissal under Rule 12(b)(6) “can be based on the lack of a cognizable legal theory
 15 or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*
 16 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). A complaint that sets forth a
 17 cognizable legal theory will survive a motion to dismiss if it contains sufficient factual
 18 matter, which, if accepted as true, states a claim to relief that is “plausible on its face.”
 19 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

20 In ruling on a Rule 12(b)(6) motion to dismiss, the well-pled factual allegations are
 21 taken as true and construed in the light most favorable to the nonmoving party. *Cousins v.*
 22 *Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). However, legal conclusions couched as
 23 factual allegations are not given a presumption of truthfulness, and “conclusory allegations
 24 of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto*
 25 *v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). A court ordinarily may not consider evidence
 26 outside the pleadings in ruling on a Rule 12(b)(6) motion to dismiss. *See United States v.*
 27 *Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). “A court may, however, consider materials—
 28 documents attached to the complaint, documents incorporated by reference in the

1 complaint, or matters of judicial notice—without converting the motion to dismiss into a
 2 motion for summary judgment.” *Id.* at 908.

3 **III. DISCUSSION**

4 As an initial matter, the Court agrees with BANA that Plaintiffs’ SAC is full of
 5 rambling allegations, conclusory allegations, and statements that make it difficult to find a
 6 “short and plain statement showing that the [Plaintiff] is entitled to relief” as to any of his
 7 claims. Fed. R. Civ. P. 8(a)(2). Although pro-se plaintiffs are held to a less stringent
 8 pleading standard, conclusory and vague allegations will still not support a cause of action.
 9 *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further,
 10 Plaintiff does not clearly assert which claims are being brought against which Defendants.
 11 For this reason, the Court will analyze each claim as applied to BANA.

12 **A. Wrongful Foreclosure**

13 In Plaintiff’s SAC, he alleges that “[t]he foreclosing party did not have standing to
 14 execute the power of sale clause in the deed of trust.” (Doc. 54 at 23.) BANA argues there
 15 can be no claim for wrongful disclosure against it because BANA was not involved in the
 16 foreclosure. BANA had transferred its interest in the loan back in 2019. The Court agrees.
 17 Plaintiff does not respond to the merits of this argument. Any wrongful foreclosure claim
 18 against BANA will be dismissed.

19 **B. Violation of the Fair Debt Collection Practices Act**

20 Plaintiff next brings a claim under the Fair Debt Collection Practices Act
 21 (“FDCPA”). He alleges that “the defendant violated one or more of the provisions
 22 contained in 15 U.S.C. §§ 1692a-1692.” (Doc. 54 at 23 ¶ 18.) That said, he does not
 23 identify which Defendant(s) violated which provision, or how they violated it. It appears
 24 Plaintiff, like in his FAC, alleges only that unspecified Defendants violated the FDCPA by
 25 not being licensed to be legal debt collectors in Arizona and were therefore engaging in
 26 fraudulent and deceptive means to attempt to collect a “purported debt.” (Doc. 54 at 21
 27 ¶¶ 19.3–19.8.) However, the FDCPA does not apply to: “any person collecting or
 28 attempting to collect any debt owed or due or asserted to be owed or due another to the

1 extent such activity . . . (ii) concerns a debt which was originated by such person” 15
 2 U.S.C. § 1692a(6)(F). Here, the loan originated with BANA, so the claim would not apply
 3 to BANA as a creditor. Again, Plaintiff does not address this argument in his response.
 4 Count II will be dismissed as to BANA.

5 **C. Violation of the Truth in Lending Act**

6 Plaintiff alleges a violation of the Truth in Lending Act (“TILA”) because he didn’t
 7 read the lending documents. Plaintiff alleges that BANA representatives told him it was
 8 all boiler plate language and that he didn’t need to read it, just sign it. BANA argues this
 9 claim fails because such claims are subject to a one-year statute of limitations. 15 U.S.C.
 10 § 1640(e); *see Hoang v. Countrywide Home Loans, Inc.*, No. 2:12-CV-01484-SLG, 2012
 11 WL 7963129, at *2 (D. Ariz. Oct. 12, 2012) (noting that TILA has a one-year statute of
 12 limitations). “[T]he limitations period [for Truth in Lending Act claims] runs from the date
 13 of consummation of the transaction” *King v. California*, 784 F.2d 910, 915 (9th Cir.
 14 1986).

15 Plaintiff seems to argue that the statute of limitations was tolled by the idea of
 16 delayed discovery. “[T]he doctrine of equitable tolling may, in the appropriate
 17 circumstances, suspend the limitations period until the borrower discovers or had
 18 reasonable opportunity to discover the fraud or nondisclosures that form the basis of the
 19 TILA action.” *Id.* However, “[t]he plaintiff must be diligent in discovering the critical
 20 facts. As a result, a plaintiff who did not actually know that his rights were violated will
 21 be barred from bringing his claim after the running of the statute of limitations, if he should
 22 have known in the exercise of due diligence.” *Bibeau v. Pac. Nw. Rsch. Found. Inc.*, 188
 23 F.3d 1105, 1108 (9th Cir. 1999), *opinion amended on denial of reh’g*, 208 F.3d 831 (9th
 24 Cir. 2000).

25 Here, the SAC alleges no facts that support there was anything that prevented
 26 Plaintiff from discovering nondisclosures. He merely alleges that he would not have signed
 27 the documents if he had read them. Defendant could have, in the exercise of due diligence,
 28 read the documents later or demanded a copy of the documents if they were not given to

1 him. Therefore, the Court finds Plaintiff failed to state a claim under the TILA.

2 **D. Breach of Contract**

3 Plaintiff next alleges that “defendant” is in breach of contract “as the original debt
4 was zero because the Plaintiff’s financial asset was exchanged for FED’S promissory notes
5 in an even exchange or 10X face [value] of note.” (Doc. 54 at 24.) Plaintiff once again
6 did not identify which Defendant he is alleging is in breach. He also does not specify
7 which contract, or provision of a contract, he is bringing this claim under. This claim fails
8 because there are no facts alleged to support a breach of contract claim. Additionally,
9 BANA argues that this claim is barred by the six-year statute of limitations for this claim.
10 *See* Ariz. Rev. Stat. § 12-548 (“An action for debt shall be commenced and prosecuted
11 within six years after the cause of action accrues, and not afterward, if the indebtedness is
12 evidenced by . . . [a] contract in writing that is executed in this state.”). Plaintiff does not
13 address Defendant’s arguments in his response. This claim will be dismissed.

14 **E. Violation of Federal Trust and Lien Laws**

15 Next Plaintiff alleges that “[t]he defendant violated Federal Trust and Lien Laws
16 when Veronica Eisert signed on behalf of the trustee without legal authorization.” (Doc.
17 54 at 24.) Plaintiff also, as Defendants note, does not mention which “laws” he is
18 attempting to bring a claim against Defendants for violating despite being instructed to do
19 so in this Court’s previous Order. This claim does not mention BANA or appear to
20 encompass any acts by BANA, so Count V will be dismissed as to BANA.

21 **F. Slander of Title**

22 Plaintiff brings a claim for slander of title. Plaintiff alleges that “[t]he defendants
23 have caused to be recorded various documents . . . including a Notice of Trustee Sale which
24 has impaired the plaintiff’s title which constitutes slander of title.” (Doc. 54 at 24.) Again,
25 this claim is identical to the claim in the FAC. To plead slander of title under Arizona law
26 a plaintiff must plead: (1) the uttering and publication of the slanderous words by the
27 defendant, (2) the falsity of the words, (3) malice, and (4) special damages. *Snyder v.*
28 *HSBC Bank, USA, N.A.*, 913 F. Supp. 2d 755, 770 (D. Ariz. 2012). Plaintiff does not

1 specify which defendant made a false statement, or what the allegedly slanderous statement
 2 was. Nevertheless, BANA did not record the Notice of Trustee's Sale which led to the
 3 foreclosure. The Deed of Trust and Assignment of Deed of Trust are the only instruments
 4 which BANA was a party to and there are no allegations that either of them contained
 5 falsities. Even if they did, any claim would be barred by the one-year statute of limitations.
 6 Ariz. Rev. Stat. § 12-541 (one year limitation on libel or slander causes of action). Plaintiff
 7 has failed to state a claim against BANA for slander of title.

8 **G. Slander of Credit**

9 Plaintiff also brings a claim for slander of credit. He alleges that "the actions and
 10 inactions of the defendants have impaired their credit & BUSINESSES." (Doc. 54 at 24.)
 11 The only change in this allegation from that of the FAC is the addition of the word
 12 "businesses." (Doc. 13 at 19; Doc. 54 at 24.) First, Defendants argue that Arizona does
 13 not recognize a cause of action for slander of credit. However, Defendants cite that if there
 14 were such a cause of action in Arizona, the elements would be: (1) the defendant made a
 15 false defamatory statement about plaintiff, (2) the defendant published the statement to a
 16 third party, and (3) defendant knew the statement was false, acted in reckless disregard of
 17 whether the statement was true or false, or negligently failed to ascertain the truth or falsity
 18 of the statement. *Snyder*, 913 F. Supp. 2d at 778 (cleaned up). The Court agrees with
 19 Defendants that Plaintiff fails to make any of these showings.

20 To start, the only amendment Plaintiff made to this claim is adding that an
 21 unspecified set of defendants impaired not only his credit, but also his "businesses." (Doc.
 22 54 at 24.) He again does not state which defendant made what statement, or how that
 23 statement was defamatory or false. Count VII will be dismissed as to BANA.

24 **H. Infliction of Emotional Distress**

25 Finally, Plaintiff brings a claim for infliction of emotional distress. Plaintiff alleges
 26 that unspecified defendants have "intentionally or negligently taken actions" that have
 27 cause him "severe emotional distress., stress. Duress, health problems, PTSD, ETC" by
 28 sending him up to seventy letters a week, "harassing phone calls, taping or stapling papers

1 to [his] home” and “slandering [him]” to others. (Doc. 54 at 24–25.) The Court already
 2 stated in its previous Order that these allegations are insufficient to bring a claim for
 3 intentional infliction of emotional distress. (Doc. 46 at 14.) It finds the same here.

4 To prove a claim of intentional or negligent infliction of emotional distress, a
 5 plaintiff must demonstrate that: “(1) the conduct by defendant was extreme and outrageous;
 6 (2) the defendant either intended to cause emotional distress or recklessly disregarded the
 7 near certainty that such distress would result from his conduct; and (3) severe emotional
 8 distress actually resulted from the defendant’s conduct.” *Bodett v. CoxCom, Inc.*, 366 F.3d
 9 736, 746 (9th Cir. 2004) (cleaned up). Plaintiff does not allege which Defendant the claim
 10 is against, who delivered the alleged letters, or what these letters said to cause his stress.
 11 BANA points out that most of the complaints relate to the foreclosure and that BANA was
 12 not involved in the foreclosure. The Court agrees and therefore finds Plaintiff has failed
 13 to state a claim for intentional or negligent infliction of emotional distress. *Ivey*, 673 F.2d
 14 at 268. Count VIII will be dismissed.

15 **IV. LEAVE TO AMEND**

16 “[A] district court should grant leave to amend even if no request to amend the
 17 pleading was made, unless it determines that the pleading could not possibly be cured by
 18 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (cleaned
 19 up). In this case, Plaintiff has not requested leave to amend, and the Court finds that leave
 20 to amend would be futile. Plaintiff has now had three opportunities to state his claims.
 21 Plaintiff was given direction by the Court about how to accurately state a claim and has
 22 failed to make any substantial modifications. Plaintiff also continues to base his allegations
 23 on Department of Justice investigations that have nothing to do with his case. Therefore,
 24 BANA’s motion will be granted, and Plaintiff will not be given leave to amend.

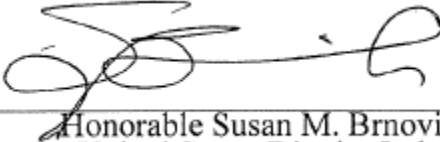
25 **V. CONCLUSION**

26 Accordingly,
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1 **IT IS HEREBY ORDERED granting** Defendant Bank of America N.A.'s Motion
2 to Dismiss Plaintiff 's Second Amended Complaint (Doc. 81). Plaintiff's claims will be
3 dismissed with prejudice.

4 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment in
5 accordance with this Order and terminate the case.

6 Dated this 24th day of May, 2024.

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10 _____
11 Honorable Susan M. Brnovich
12 United States District Judge
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